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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,547	01/25/2002	Eric Wolfgruber	02-121	3047

7590

04/09/2003

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EXAMINER

ZIMMERMAN, JOHN J

ART UNIT

PAPER NUMBER

1775

DATE MAILED: 04/09/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/057,547

Applicant(s)

WOLFSGRUBER ET AL.

Examiner

John J. Zimmerman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/647,547.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **FIRST OFFICE ACTION AFTER RCE**

### ***Continued Examination Under 37 CFR 1.114***

1. A Request for Continued Examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 26, 2003 has been entered.

### ***Amendment***

2. The Amendment Under 37 C.F.R. 1.116 received February 3, 2003 has been entered as instructed in the RCE filing papers. Claims 11-18 are pending in this application.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

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(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 11-13 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Valdo (U.S. Patent 3,848,666).

5. Valdo discloses an article comprising a foamed metal body having embedded metal structural elements (e.g. tubes, blocks or plates) which act as reinforcements (e.g. see column 5, lines 8-41). Valdo specifically discusses foaming the panels between molding sheets and then removing the molding sheets (e.g. see column 3, lines 8-40). This forms a mold shaped demolded shaped foamed metal body having non-foamable functional structural elements integrally bonded and fixedly embedded in the foamed body. Further covering layers may be secured to the demolded metal foam panels (e.g. see column 2, lines 20-47). In addition, there is no evidence of record that the molded foamed panels of Valdo before demolding would not read on the physical article described in applicant's claims requiring that the body be sandwiched between two forms made of metal (e.g. see applicant's claims 12, 13).

6. Claim 11 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bjorksten (U.S. Patent 3,941,182).

7. Bjorksten discloses an article comprising a foamed metal body having embedded metal structural reinforcing elements which are coated with an adhesion promoting metal coating (e.g.

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see column 4, lines 34-55). The article is made by sandwiching the foamed composite body between mold walls.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valdo (U.S. Patent 3,848,666).

10. Valdo discloses an article comprising a foamed metal body having embedded metal structural elements (e.g. tubes, blocks or plates) which act as reinforcements (e.g. see column 5, lines 8-41). Valdo specifically discusses foaming the panels between molding sheets and then removing the molding sheets (e.g. see column 3, lines 8-40). This forms a mold shaped demolded shaped foamed metal body having non-foamable functional structural elements integrally bonded and fixedly embedded in the foamed body. Further covering layers may be secured to the demolded metal foam panels (e.g. see column 2, lines 20-47). Valdo differs from claims 14 and 15 in that Valdo may not disclose any specific embodiments wherein at least one of the two molding sheets is curved. Valdo, however, does disclose that his panels are useful as

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floor panels, panels in freezing compartments, wall panels and roof panels (e.g. see column 4, line 60 - column 5, line 6) as well as light weight cooling vent units, heat exchange units, evaporative units, building heating units and structures for the automobile industry (e.g. see column 1, lines 10-25). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to make Valdo's panels in any shape that could be typically found in any of these uses since Valdo discloses these uses to be an end use for his panels. The examiner notes that there is no patentable distinction in forming the panels of Valdo to meet any structural shapes typically found in floor panels, panels in freezing compartments, wall panels, roof panels, light weight cooling vent units, heat exchange units, evaporative units, building heating units and structures for the automobile industry since Valdo intends for the panels to be adapted for these end uses.

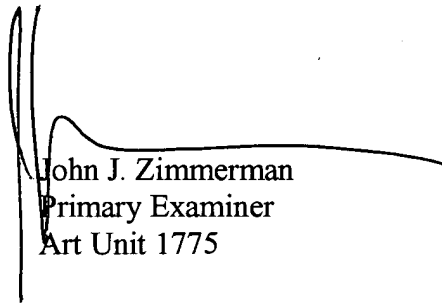
### ***Response to Arguments***

11. Applicant's arguments filed February 3, 2003 have been fully considered but they are not persuasive with regards to the remaining rejections. As noted in the Advisory Action (Paper No. 11 mailed February 20, 2003), the applicant has overcome the rejections found in paragraphs 3, 5-7, 9-10 and 15-18 of the Second Office Action (Paper No. 7, mailed October 21, 2002). Applicant has not yet adequately explained how the pending claims differ from the Valdo and Bjorksten references because these references clearly manufacture their foamed products in molds and then demold them. Of particular note, Valdo specifically discusses foaming the panels between molding sheets and then removing the molding sheets (e.g. see column 3, lines 8-40).

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***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Zimmerman whose telephone number is (703) 308-2512. The examiner can normally be reached on 8:30am-5:00pm, M-F. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



John J. Zimmerman  
Primary Examiner  
Art Unit 1775

jjz  
April 3, 2003